



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/172856

PRELIMINARY RECITALS

Pursuant to a petition filed March 17, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 14, 2016, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency correctly implemented a tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Deb Bohlman

Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. In March 2013 the agency sent the petitioner a notice of FS overpayment for the period from November 1, 2012 to March 31, 2013. The petitioner appealed this overpayment. A hearing was held, and on April 19, 2013 ALJ Gagnon issued a written decision concluding that the petitioner was overpaid \$1,084 in FS benefits from November 1, 2012 to February 28, 2013. The agency

originally alleged an overpayment in the amount of \$1,355. ALJ Gagnon reduced the overpayment by \$271.

3. On April 23, 2013 the agency sent the petitioner a new notice of FoodShare (FS) overpayment stating that she was overpaid \$1,084 in FS benefits, under claim number [REDACTED], from November 1, 2012 to February 28, 2013. This notice was issued as ordered by ALJ Gagnon in her April 19, 2013 decision.
4. On April 30, 2013 the agency sent the petitioner a notice of FS overpayment stating that she was overpaid \$271 in FS benefits, under claim number [REDACTED], from March 1, 2013 to March 31, 2013.
5. This new notice was also issued in accordance with ALJ Gagnon's April 19, 2013 decision. She concluded that March had not been shown to have been calculated correctly, however, the agency should re-calculate, and send a new notice if necessary. The agency thus re-calculated and sent a new notice of overpayment for March 2013 as ordered.
6. On May 22, 2013 the agency sent the petitioner a notice of FS overpayment stating that she was overpaid \$860 in FS benefits, under claim number [REDACTED], from April 1, 2013 to May 31, 2013.
7. The petitioner had previously appealed her FS allotment for April 2013. She argued that her boyfriend, who was employed, and had additional income, should not have been included in her household. In April 2013 ALJ Gagnon issued a separate decision concluding that the agency had properly included the petitioner's boyfriend and income in her household for April 2013, and that at that time the petitioner's boyfriend was living in her home.
8. The agency sent the petitioner repayment agreements on April 24, 2013, May 1, 2013, and May 21, 2013.
9. The petitioner was repaying these overpayments through recoupment of her current FS benefits for several years. This stopped collection actions during that time period.
10. The agency sent the petitioner dunning notices reminding her of these overpayments on December 3, 2013, January 5, 2016, and February 2, 2016.
11. On March 11, 2016 the agency sent the petitioner a notice of tax intercept.
12. On March 16, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the notice was May 16, 2014, and division of hearings and appeals received the petitioner's request for fair hearing on May 21, 2014. This is within the 30 day window, and the petitioner's appeal is timely with regard to the tax intercept issue.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

Here the petitioner disputed the underlying overpayment. Not only did she previously have an appeal right regarding those overpayments, but she actually appealed the overpayments. The issue with all of the overpayments was whether or not her boyfriend was in her home. ALJ Gagnon held hearings, and concluded that the overpayments as they have been issued by the Department as of today's date were correct. There was month that the Department had to fix. The Department did as ordered, and issued new overpayment notices. Those new notices form the basis for the overpayments at issue in this tax intercept. Not only am I statutorily without jurisdiction to address the overpayments, but claim and issue preclusion also prevent me from addressing these issues.

There is no dispute that the use of tax intercept was proper in this case. The petitioner received three or more dunning notices, the debt was valid and legally enforceable, the debt was over both the State and federal threshold amount for a tax intercept, the debt is within State and Federal time limits for collecting, is free from any appeal, and the Petitioner has not filed for bankruptcy.

CONCLUSIONS OF LAW

The agency correctly implemented a tax intercept

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of April, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 21, 2016.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit